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The court, after disposing of the question whether such duty had been imposed upon the defendant, addressed itself to determine the meaning of "medical attendance." "Does it mean a regularly licensed physician, or may some other person render 'medical assistance?' " The growth of medical science was reviewed, and its gradual recognition in the law, until, from the middle of the eighteenth century, "it has come to be regarded as a duty devolving upon persons having the care of others to call upon medical assistance in case of serious illness." Further, to protect the public, medical practice was restricted to those licensed and registered, and those having a diploma from some incorporated college conferring the degree of doctor of medicine. The conclusion was therefore reached "That the medical attendance required by the Code is the authorized medical attendance prescribed by the statute," and the conviction of the defendant was held proper.

The contention that the provisions of the Code were violative of the state constitution, which gave religious liberty to all, was answered by the court: "Full and free enjoyment of religious profession and worship is guaranteed, but acts which are not worship are not. A person cannot, under the guise of religious belief, practice polygamy, and still be protected from our statutes constituting the crime of bigamy. He cannot, under the belief, or profession of belief that he should be relieved from the care of children, be excused from punishment for slaying those who have been born to him. * * * * The law of nature, as well as the common law, devolved upon the parents the duty of caring for their young in sickness and in health, and doing whatever may be necessary for their care, maintenance, and preservation, including medical attendance, if necessary: and an omission to do this is a public wrong, which the state under its police power may prevent."

The opinion concluded as follows: "We are aware that there are people who believe that the Divine power may be invoked to heal the sick, and that faith is all that is required. There are others who believe that the Creator has supplied the earth, nature's storehouse, with everything that man may need for his support and maintenance, including the restoration and preservation of his health, and that he is left to work out his own salvation, under fixed natural laws. There are still others who believe that Christianity and science go hand in hand, both proceeding from the Creator; that science is but the agency of the Almighty through which He accomplishes results; and that both science and Divine power may be invoked together to restore diseased and suffering humanity. But sitting as a court of law, for the purpose of construing and determining the meaning of statutes, we have nothing to do with these variances in religious beliefs, and have no power to determine which is correct. We place no limitations upon the power of the mind over the body, the power of faith to dispel disease, or the power of the Supreme Being to heal the sick. We merely declare the law as given us by the legislature."

The same question in slightly different form has come up several times. That this decision is in accord with principle and the authorities, see 2 MICHIGAN LAW REVIEW, 149 (November, 1903); and 13 *Yale Law Journal*, 42 (November, 1903).

VALIDITY OF A NOTE GIVEN TO AN UNLICENSED PRACTITIONER OF MEDICINE FOR MEDICAL SERVICES WHEN THE NOTE HAS PASSED BEFORE

IT IS DUE TO A BONA FIDE PURCHASER FOR VALUE AND WITHOUT NOTICE.—The question suggested in the above head-lines is somewhat discussed in the recent Nebraska case of *Citizens' State Bank v. Nore* (1903), 93 N. W. 160, 60 L. R. A. 737. One Brett was apparently the proprietor of what he called the "American Medical and Surgical Institute," and he held himself out as prepared to treat certain enumerated diseases both medically and surgically. He was a comparative stranger in the town, and it does not appear that his "Institute" had any standing in the community. Brett had never complied with the provisions of the statute regulating the practice of medicine in Nebraska, and was from every point of view an irregular practitioner. The suit was upon a promissory note, payable six months from date, given by defendant to the said Brett for medical services rendered to the former's wife. At the time of the execution of the note and as a part of the same transaction Brett executed and delivered to the defendant an instrument in which he acknowledged the receipt of money and agreed to treat defendant's wife "for three months, until cured," furnishing the necessary medicine and apparatus and "to return note at end of specified time if no cure is effected, and to give an extension of time if needed." On the day after receiving the note, Brett discounted it at the banking house of the plaintiff, the business being done through the cashier. There was no evidence that this officer, or any officer or agent of the bank, had any knowledge or notice of the purpose for which the note was given. The note not being paid at maturity, suit was brought thereon. The defense was that as Brett was not a licensed physician, the note by force of the statute prohibiting the recovery for medical services by unlicensed practitioners and making it a misdemeanor, punishable by fine, for such persons to practice, could not be enforced; that the execution of the note had been induced by fraud, and that the consideration had failed. At the trial, a peremptory instruction having been refused the plaintiff, the jury returned a verdict for the defendant. But the judgment rendered thereon was reversed by the supreme court for the general reason that a statute should not be so construed as to make a negotiable instrument void in the hands of a *bona fide* purchaser, unless the statute specifically declares that it shall be void.

The Nebraska medical act invoked by defendant in support of his contention, is summarized by the court in its opinion as follows: "Article 1, Chap. 55, of the Compiled Statutes makes it the duty of all persons desiring to practice 'medicine, surgery, or obstetrics in this state to obtain a certificate from the state board of health, and to file the same with the clerk of the county in which they desire to practice. Section 15 provides: 'No person shall recover in any court in this state any sum of money whatever for any medical, surgical or obstetrical services unless he shall have complied with the provisions of this act and is one of the persons authorized by this act to be registered as a physician.' Section 7 declares it to be unlawful for any person to practice in any of these lines without first obtaining and registering such certificate; and § 16 makes it a misdemeanor to so practice, and imposes a fine therefor."

It was contended in behalf of the defendant "that when a statute inflicts a penalty for doing an act, such act is unlawful, though not in terms declared to be illegal;" that "any contract the consideration of which is founded upon the doing of such an act is void;" that the legislature, by making the

unlicensed practice of medicine a crime, had by implication declared all contracts growing out of such practice to be void. The court, after reviewing several authorities that support such a contention, held that, although they might be inclined, if the question were a new one in the jurisdiction, to regard the argument in behalf of the defendant as entitled to great weight, they could not, in view of the previous decisions of the court, declare the note in suit to be void in the hands of an innocent purchaser for value. The cases that were regarded as binding in this respect were *Smith v. Columbus State Bank*, 9 Neb. 31 and *Wortendyke v. Meehan*, 9 Neb. 221. In the former, the action, brought by an innocent holder for value, was upon a note whose consideration was the compounding of a crime; and the court said that in order to prevent a recovery under such circumstances, the case must "come within some statute expressly declaring notes given 'for such consideration' void." In recognizing the binding force of these decisions, the court said: "After having stood for almost a quarter of a century as the law of this state, we think it far better to adhere to its doctrine than to unsettle the law by adopting a different rule, even though it might be more in accordance with the weight of authority elsewhere. Much is said concerning the policy of the statute and the evils which are likely to result from allowing contracts to be enforced which are contrary to its purpose and spirit. We fully recognize the importance of such legislation as the medical act. It embodies a fixed and time-honored policy of the most vital concern to the state and its people. But it may well be questioned whether the evils consequent upon the free circulation of the notes given for services of unlicensed practitioners could be more serious than the derangement of business resulting from a rule that would make all such notes void in the hands of innocent purchasers. It must be remembered that instruments like these have no ear-marks, and, when once it is understood that a limited and indistinguishable class of them is deprived of the virtues of negotiability, a step is taken toward casting the taint of suspicion upon all. * * * From the standpoint of public policy, as well as that of *stare decisis*, we are of the opinion that the medical act furnished no defense as against the plaintiff in error in this action."

It is a general rule that transactions entered into in violation of law cannot be made the basis of a valid contract. If a city ordinance, for example, that has been properly authorized and enacted, provides that a particular business shall be unlawful for unlicensed persons, and the ordinance has been enacted for the protection of the public and not for revenue purposes only, any contract entered into in connection with such business by one who has not been authorized by the proper license, would be void. As put by the court in *Buckley v. Humason*, 50 Minn. 195, 16 L. R. A. 423, "business transactions in violation of law, cannot be made the foundation of a valid contract; and the general rule is that where a statute makes a particular business unlawful generally, or for unlicensed persons, any contract made in such business by one not authorized is void." In the case under consideration, the note was certainly void as between the maker and the payee, and would have been even in the absence of the statutory provision that expressly prohibited recovery for medical services by one who had not complied with the requirements of the act, for it was by the act made unlawful and a misdemeanor for one to practice without first having obtained and registered the required cer-

tificate of qualification. The object of the statute was the protection of the public. See *Swanger v. Mayberry*, 59 Cal. 91; *Harrison v. Jones*, 80 Ala. 412; *Gardner v. Tatum*, 81 Cal. 370; *Puckett v. Alexander*, 102 N. C. 95, 3 L. R. A. 43; *Underwood v. Scott*, 43 Kans. 714; *Mayfield v. Nale*, 26 Ind. App. 240; *Bohn v. Lowery*, 77 Miss 424; *Haworth v. Montgomery*, 9, Tenn. 16; *Leman v. Houseley*, L. R. 10 Q. B. 66; *Taliaferro v. Moffett*, 54 Ga. 150, 153; *Aiken v. Blaisdell*, 41 Vt. 655; *Ottaway v. Lowden*, 55 N. Y. App. Div. Rep. 410; but see *Smythe v. Hanson*, 61 Mo. App. 285. And if the statute had expressly provided that any contract for medical services by an unlicensed practitioner should be void, the note would undoubtedly have been void in the hands of an innocent holder for value. See *Larson v. First National Bank*, 62 Neb. 303, 87 N. W. 18; *Weed v. Bond*, 21 Ga. 195; *Sondheim v. Gilbert*, 117 Ind. 71; *Voreis v. Nussbaum*, 131 Ind. 267; 31 N. E. 70; *Texarkana & Fort Smith R. Co. v. Bemis Lumber Co.*, 67 Ark. 542, 549, 55 S. W. 944; *German Bank v. DeShon*, 41 Ark. 331, 339, 340; *Hatch v. Burroughs*, 1 Woods 439, 448; *Angier v. Smith*, 101 Ga. 844, 28 S. E. 167; *Traders' Bank v. Alsop*, 64 Iowa 97; *Rhodes v. Beall*, 73 Ga. 641.

That which a statute has directly and positively declared to be void, cannot have life for any purpose. A note that is made void by statute cannot be given validity by a transfer before maturity to an innocent holder for value. The necessity of preserving the integrity and free circulation of commercial paper is not so controlling as to reach a case of this kind. Every one is charged with notice of the invalidity of the paper. It might seem that a note that is void as between the parties, because arising out of a prohibited and unlawful transaction, should be dead for all purposes, on the ground that being tainted and poisoned by its connection with what the law has stamped as criminal, it should be against public policy to give it life even for the purpose of protecting the innocent purchaser for value before maturity. A note of this kind, like the note made void by statute, does not ordinarily carry upon its face any ear-marks of invalidity. In each case, the note grows out of a transaction that is prohibited and made unlawful by statute. Why should the results of knowledge of invalidity be imposed upon the innocent holder in the one case any more than in the other? In making an act a crime why has not the legislature thereby by implication made all contracts growing out of the act just as thoroughly void as they would be if the statute had expressly declared them to be void? Why may not knowledge of the provisions of the law and of the facts on the part of the innocent transferee for value before maturity be imputed in the one case as well as in the other? And why do not the paramount demands of the law merchant apply in the one case as well as in the other? These questions naturally suggest themselves, and are certainly not without significance. But notwithstanding the apparent similarity of the two cases, the courts at present very generally hold that the innocent purchaser for value before maturity of paper growing out of a transaction that is prohibited and made unlawful by statute is protected unless the paper is also made void by the express terms of the statute. The case under consideration was undoubtedly decided according to the weight of modern authority. See cases cited *supra*.

PARTIES—JOINING REPRESENTATIVE OF DECEASED JOINT OBLIGOR—SURVIVORS.—There has been some conflict of authority respecting the effect